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Tax I.D. No.: 20-3743893

April 6, 2018

Clerk
**UNITED STATES DISTRICT
COURT OF NEW JERSEY**
Mitchell H. Cohen, U.S. Courthouse
1 John F. Gerry Plaza, 4th & Cooper Streets
Camden, NJ 08101

Re: Zampetis v. City of Atlantic City, et al
NJ District Court Case #: 1:15-cv-01231-NJH-AMD
Requests Oral Argument

Dear Sir/Madam,

I have enclosed an original and one (1) copy of a Notice of Motion To Compel Documents in this matter.

If you have any questions, or need for additional information, please do not hesitate to contact me or a member of my staff.

Very truly yours,


/s/ David R. Castellani
DAVID R. CASTELLANI

DRC/k

cc: Nicholas Zampetis
Todd J. Gelfand, Esquire (*via email only*)
Tracy Riley, Esquire (*via email and regular mail*)

CASTELLANI LAW FIRM, LLC

David R. Castellani, Esquire - ID #: 023691991

450 Tilton Road, Suite 245

Northfield, New Jersey 08225

(609) 641-2288

Attorneys for Plaintiff(s)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE**

NICHOLAS J. ZAMPETIS

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: CIVIL No.: 1:15-cv-01231-NLH-AMD

V.

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CITY OF ATLANTIC CITY, POLICE

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OFFICER IVAN LOPEZ, POLICE

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OFFICER ANTHONY ALOSI, JR.

POLICE OFFICER MIKE AUBLE, and :

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JOHN DOE ATLANTIC CITY POLICE :

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OFFICERS 1-5, INDIVIDUALLY AND :

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IN THEIR OFFICIAL CAPACITY,

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JOHN DOES 1-5

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To: Rachel Conte, Esquire
LAW OFFICES OF RILEY & RILEY
The Washington House
100 High Street, Suite 302
Mount Holly, New Jersey 08060

Todd Gelfand, Esquire
BARKER, GELFAND & JAMES
Linwood Greene – Suite 12
210 New Road
Linwood, New Jersey 08221

TAKE NOTICE that the undersigned will apply to the above-named Court, located at United States District Court, District of New Jersey, as soon as counsel may be heard for an Order

to compel Defendants to supply any and all documents as requested in a Supplemental Notice to Produce dated August 30, 2017 upon the following grounds:

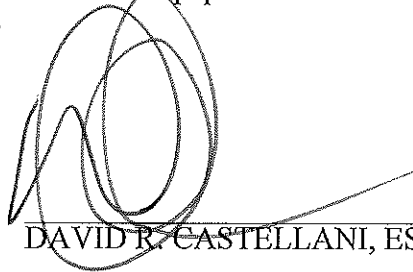
See attached Brief in Support of Motion.

the undersigned:

- ☐ waives oral argument and consents to disposition on the papers.
- ☐ does not request oral argument at this time.
- ☒ **requests oral argument.**

A proposed form of Order is annexed.

Dated: April 6, 2018



DAVID R. CASTELLANI, ESQUIRE

DAVID R. CASTELLANI
Attorney for Plaintiff

CASTELLANI LAW FIRM, LLC

David R. Castellani, Esquire - ID #: 023691991

450 Tilton Road, Suite 245

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(609) 641-2288

Attorneys for Plaintiff(s)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE**

NICHOLAS J. ZAMPETIS	:	
	:	
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	:	CIVIL No.: 1:15-cv-01231-NLH-AMD
v.	:	
	:	
CITY OF ATLANTIC CITY, POLICE	:	
OFFICER IVAN LOPEZ, POLICE	:	
OFFICER ANTHONY ALOSI, JR.	:	
POLICE OFFICER MIKE AUBLE, and	:	
JOHN DOE ATLANTIC CITY POLICE	:	CERTIFICATION OF COUNSEL
OFFICERS 1-5, INDIVIDUALLY AND	:	
IN THEIR OFFICIAL CAPACITY,	:	
JOHN DOES 1-5	:	
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1. I am an attorney licensed to practice law in the State of New Jersey and am the attorney for the Plaintiff in the above entitled action.

2. As part of initial discovery requests, I requested among other documents all IA files for ACPD officers from 2005 to 2015. Defendant City of Atlantic City refused to provide the same.

3. Counsel appeared at Rule 37 conference and was directed to brief the issues.

4. Attached as *Exhibit A* are Plaintiff's supplemental Notice to Produce and a followup letter requesting the IA files.

5. Attached as *Exhibit B* are portions of Plaintiff's expert Jon Shane's trial testimony in Stadler v. City of Atlantic City, et al.

6. Plaintiff has referenced Dr. John Shane's reports in Costantino which will be produced in redacted form as *Exhibit C*.

7. Plaintiff will request the court impose the sanction of attorney's fees for the necessity of filing the within motion given the numerous other times similar courts have ruled on this issue in relation to identical claims made against the identical defendant to produce the same.

8. Plaintiff relies upon the brief submitted with this Motion and any reply brief submitted.

9. Plaintiff also requests oral argument with respect to this Motion.

Date: April 6, 2018



DAVID R. CASTELLANI
Attorney for Plaintiff

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NICHOLAS J. ZAMPETIS

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: CIVIL No.: 1:15-cv-01231-NLH-AMD

V.

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44

CITY OF ATLANTIC CITY, POLICE

• •

OFFICER IVAN LOPEZ, POLICE

:

OFFICER ANTHONY ALOSI, JR.

• •

POLICE OFFICER MIKE AUBLE, and : BRIEF IN SUPPORT OF MOTION

JOHN DOE ATLANTIC CITY POLICE :

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OFFICERS 1-5, INDIVIDUALLY AND :

•

IN THEIR OFFICIAL CAPACITY, :

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JOHN DOES 1-5

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Plaintiff Nicholas Zampetis by and through his attorney David R. Castellani of Castellani Law Firm moves to compel Defendant City of Atlantic City and the individual Defendant police officers to produce the following discoverable documents requested via Plaintiff's Supplemental Notice to Produce documents directed to the Defendant City of Atlantic City on August 30, 2017 and again in a subsequent letter dated January 29, 2018: (1) Internal Affairs complaints filed against all ACPD officers for excessive use of force, assault, false arrest from 2005 to present (2) all Internal Affairs complaints for all officers filed with the ACPD between 2005 to present. The Defendant City of Atlantic City has refused to provide such documents requested and a Rule 37

conference has been completed and Defendant is on notice of Plaintiffs' application for counsel fees as a result of their failure to provide the discovery necessitating the current motion.

BACKGROUND FACTS

1. Plaintiff originally filed a complaint pursuant to 42 U.S.C. §1983 after he was brutally assaulted by three (3) Atlantic City police officers, Defendant Anthony Alsoi, Defendant Michael Auble and Defendant Ivan Lopez while attempting to leave the Tropicana Casino in Atlantic City New Jersey with a group of friends outside a bus in the valet parking area.

2. Approximately four (4) to five (5) members of Plaintiff's group witnessed the brutal assault upon Plaintiff including the use of fists, kicks and baton strikes to the Plaintiff's body causing him serious and permanent injuries including a fractured nose, permanent disfigurement with breathing difficulties, concussion, post-concussion syndrome, post-traumatic stress syndrome among others.

3. Two (2) eyewitnesses recently testified in deposition on April 4, 2018 that the Plaintiff was not resisting and was tackled from behind by police officers and beaten repeatedly with batons and with such force that it appeared to the witnesses, that the officers were intentionally trying to draw blood from the Plaintiff and to inflict permanent physical injuries.

4. Plaintiff was charged with the disorderly persons offense, resisting arrest and assault on the officers and was tried as a criminal Defendant in the Atlantic City Municipal Court and was acquitted of all charges in the February 2015 by the Municipal Court Judge after hearing the eyewitness testimony and the testimony of the officers and the Plaintiff.

5. Plaintiff after two (2) motions to dismiss Plaintiff's complaint filed by the City of Atlantic City filed a Second Amended Complaint which also included claims for common law and constitutional malicious prosecution as well as the common law also and constitutional claims for

the use of the unreasonable and excessive force in the arresting the Plaintiff

6. In addition, in his Second Amended Complaint, Plaintiff alleges his constitutional rights were violated as a direct result of the Defendant City of Atlantic City having a permanent and well-settled practice or custom of allowing police officers including the named Defendants to employ the use of excessive force while effectuating an arrest, creating an atmosphere of illegal and unconstitutional behavior and deliberate, reckless disregard for the welfare of the public at large including the Plaintiff.

7. Plaintiff further alleges in his Second Amended Complaint, Count Two, paragraph 10. that Atlantic City and the Atlantic City Police Department had a well-settled practice of allowing police officers including the individual Defendants to falsely arrest and charge civilians without probable cause as a tool to conceal their own illegal and reasonable conduct.

8. Plaintiff further alleged in his Second Amended Complaint in the Second Count paragraph 10, (g) that “Atlantic City and the Atlantic City Police Department have a permanent and well-settled practice of refusing to adequately respond and to investigate complaints regarding officer misconduct by the citizenry including, but not limited to, complaints regarding arrest procedures, and the use of excessive physical force, thus creating an atmosphere of illegal and unconstitutional behavior in deliberate indifference and reckless disregard of the welfare of the public at large including the Plaintiff. This is evident from the 509 excessive force complaints filed between 2005 and 2010 against the Atlantic City Police Department officers and the failure of Chief Jubilee or any other chief and/or the Internal Affairs Department from sustaining few with any of the 509 complaints.

9. In an effort to develop and fortify Plaintiff's claims against the Defendant individual officers and the Defendant City of Atlantic City the Plaintiff has requested numerous

discoverable and clearly relevant documents pursuant to Fed. R. Civ. P. 26 the Defendants have refused to produce the aforementioned documents. This motion to compel follows.

LEGAL ARGUMENT

PURSUANT TO FED. R. CIV. P. 26 (B) (1), “PARTIES MAY OBTAIN DISCOVERY REGARDING ANY NONPRIVILEGED MATTER THAT IS RELEVANT TO ANY PARTY’S CLAIM OR DEFENSE” AND “THE COURT MAY ORDER DISCOVERY OF ANY MATTER RELEVANT TO THE SUBJECT MATTER INVOLVED IN THE ACTION”, ALTHOUGH “RELEVANT INFORMATION MAY NOT BE ADMISSIBLE AT TRIAL IF THE DISCOVERY APPEARS REASONABLY CALCULATED TO LEAD TO THE DISCOVERY OF ADMISSIBLE EVIDENCE.” PEARSON V. MILLER, 211 F.3d 57, 65 (3d Cir. 2000).

The exact limits of Rule 26 relevance standards depend upon the context of each particular action, and the determination of relevance is within the sound discretion of the District Court. Importantly however, “courts have construed the Rule liberally creating a broad vista for discovery.” Oppenheimer Fund Inc. v. Sanders, 437 U.S. 340, 351 (1978). When a suit against municipalities is based on Section 1983, the municipality can only be liable when the alleged constitutional transgression implements or executes a policy, regulation, decision officially adopted by the governing body or informally adopted by custom or practice. Monell v. New York City Department of Social Services, 436 U.S. 658 (1978). See also Beck v. City of Pittsburgh, 89 F.3d 966, 971 (3d Cir. 1996). Although a municipality may not be held liable for a constitutional violation under a theory of vicarious liability, it can be held responsible as an entity when the injury inflicted is permitted under the adopted policy or custom. “An official policy must be the moving force of the constitutional violation in order to establish the liability of a government body under Section 1983”. Or Remillard v. City of Egg Harbor, 424 F. Supp. 766, 771–72 (D.N.J. 2006).

A government policy or custom is established in two (2) ways. Policy is made when the decision maker possessing final authority to establish municipal policy with respect to the action

issues an official proclamation, policy or edict. A course of conduct is considered a custom when, though not authorized by law such practices of state officials are so permanent and well settled as to virtually constitute law. Beck, 89 F.3d at 971. In order to sustain a §1983 claim for municipal liability, the Plaintiff must simply establish a municipal custom coupled with causation, i.e., that policymakers were aware of similar unlawful conduct in the past, but failed to take precautions against future violation, and that their failure, at least in part, led to the injury. Id. at 972. Proof of the existence of an unlawful policy or custom alone is insufficient to maintain a §1983 action. Rather, the Plaintiff bears the burden of proving that the municipal practice was the proximate cause of the injury suffered. Id. at n. 6.

To demonstrate causation, Plaintiff must show a “plausible nexus” or “affirmative link” between the municipalities custom and the specific deprivation of the constitutional right at issue. Bielevicz v. Dubinon, 915 F.2d 845,850 (3d. Cir. 1990). See also, City of Oklahoma v. Tuttle, 471 U.S. 808, 823 (1985). Thus, if the municipality is shown to have tolerated known misconduct by police officers, the issue of whether the municipalities inaction contributed to the officer’s decision to act unlawfully is a question of fact for the factfinder. Id. Municipality’s failure to act, once it is on notice that its procedures and policies are constitutionally deficient creates a fact question respecting causation. Id.

**PLAINTIFF’S REQUEST FOR ALL INTERNAL AFFAIRS FILES FOR
EVERY ATLANTIC CITY POLICE DEPARTMENT OFFICER FROM 2005
TO THE PRESENT, INTERNAL AFFAIRS COMPLAINTS FILED AGAINST
ALL ACPD OFFICERS WHERE EXCESSIVE FORCE, ASSAULT, FALSE
ARREST FROM 2005 TO THE PRESENT.**

In support of his claims for municipal liability recognized in Monell similar to the Plaintiff’s in the previous cases of Castellani, Costantino, Harrison, Adams and most recently as recognized by the jury in the Stadler case, Plaintiff contends that the a ACPD’s Internal Affairs

process is a sham and a pretense that offers no meaningful redress to the citizens of Atlantic City whose rights have been violated by the members of the Atlantic City Police Department. Plaintiff seeks the Internal Affairs files for every officer of the Police Department for the past 10 years. The Defendant's objections appear to be that the request is overbroad, not likely to lead to discoverable material and that no support exists for the request. However, Plaintiff is entitled to the Internal Affairs files for every City officer in the past 10 years or some shorter time determined by this court, or at a minimum, a representative sample to prove its Monell claim that Atlantic City has been deliberately indifferent to the widespread misconduct of its officers. To be certain, a federal jury in this district in the Stadler case made a specific factual finding that the City of Atlantic City was liable for condoning and acquiescing in a custom, practice and policy of permitting its officers to use excessive force in the effecting arrests during the same time period set forth in this Plaintiff's complaint.

The Plaintiff's expert in that case Dr. John Shane is the same expert that Plaintiff intends to utilize to conduct a similar analysis, if not identical analysis, as performed in the Stadler matter. This court should be aware that the Stadler incident took Place in February of 2013 and that the incident and attack of the Plaintiff by the Atlantic City police officers in this case took place on February 17, 2013 this same exact month as the incident in Stadler.

In Stadler, Dr. Shane conducted a two-part analysis initially choosing 33 random files from the files produced which were ordered by the court for the time period from 2004 to 2015. Dr. Shane testified that he relied on the random sample of 33 Internal Affairs cases for a qualitative analysis looking at the process by which Atlantic City Police Department conducts its Internal Affairs program. See Dr. Shane direct testimony in Stadler v. City of Atlantic City at page 2402 to 2457, March 6, 2018, attached as *Exhibit A*.

Dr. Shane also testified in the Stadler trial that he reviewed and had access to the Internal Affairs investigations much broader than the 2009 to 2013 time frame and in fact reviewed Internal Affairs files for the entire Police Department from 2004 to 2015. Based upon this analysis of the entire Internal Affairs files for the Police Department for the period of 2004 to 2015, Dr. Shane was able to formulate a statistical analysis and provide opinions concerning the percentages of complaints that involved the use of excessive force versus other complaints made as well as the percentage of complaints made by citizens or external complaints versus those made inter-departmentally or internal complaints. Dr. Shane was able to formulate opinions concerning how Atlantic City deviated from a national average which provided Dr. Shane a basis from which he testified that the entire Internal Affairs investigation process within the Atlantic City Police Department had gone astray and was severely deficient. From this data, Dr. Shane was also able to testify from his statistical findings that a reason for the same could be a bias existing within the organization in favor of officers compared to a bias against someone outside the organization such as a citizen and that the investigators within the Internal Affairs Department within the City of Atlantic City Police Department were somehow tipping the scales in favor of complaints generated inside the agency compared to outside the agency which is relevant to a well Plaintiff's claims in this case as well as to the cases previously cited many of which are pending before the Federal District Court in Camden concerning the inadequacy of Atlantic City's Internal Affairs process, the inadequacy of their Early Warning System including a lack of the same for the relevant time period all leading to an inference of a pattern, practice, policy and custom of condoning and/or acquiescing in its officers use of effect of excessive force in effecting arrests. *Exhibit B*. It was from this testimony that the jury in Stadler found Defendant City of Atlantic City liable under Monell. Dr. Shane's very testimony in Stadler and his statistical and quantitative analysis from

which he renders his opinions provides the very basis for Plaintiff's discovery requests.

Thus, Plaintiff's request for the Internal Affairs files for every City officer in the past 10 years or dating back to 2005 is clearly relevant to his burden to prove his Monell claim that the City had been deliberately indifferent to the widespread pattern, practice or custom of the use of excessive force amongst its police force in effecting arrests.

The District Court has already recognized in Groark that liability based on a custom rather than to formally adopt the policy proceeds on the theory that the relevant practice is so widespread as to have the force of law. 989 F. Supp. at 386. Custom may also be established by proof of knowledge and acquiescence. The Supreme Court has recognized that where a violation of federal rights is a highly predictable consequence of any inadequate custom in a situation likely to reoccur municipal liability may attach based upon a single application of the custom. Id. Simply showing a Plaintiff suffered a deprivation of constitutional rights will not permit an inference of municipal culpability and causation. Id. at 386–87. Instead a Plaintiff must demonstrate that the municipal action was taken with deliberate indifference to its known or obvious consequences. A showing of simple or even heightened negligence will not suffice. A pattern or a continued adherence to an approach that a municipality knows or should know was failed to prevent tortious conduct of police officers may establish the conscious disregard for the consequences of its actions necessary to trigger municipal liability. Deliberate indifference may also be shown if it is obvious that a policy or custom would lead to constitutional violations. Thus, given Plaintiff's recognizably high burden as set forth above, the Plaintiff should be entitled to the Internal Affairs files for all Atlantic City police officers from 2005 to the present or from 2005 to 2015. Similar to the court's findings in Groark (2014 US Dist. LEXIS 97 551 D.N.J. July 18, 2014) Plaintiff's claims against Atlantic City do not just focus on how Atlantic City addresses complaints against the individual officers but also

that the City has established, acquiesced and knew that its policies and procedures as to all of its police officers would violate citizen's constitutional rights. Thus, Plaintiff's claims are not just limited to how Atlantic City acts with respect to its particular officers named in the complaint, the actions in the Internal Affairs files of other officers are clearly relevant for discovery purposes not only for Plaintiff's expert to conduct the qualitative analysis that the Dr. Shane has previously performed in a number of cases before this court but also the statistical analysis which enabled Plaintiffs expert Dr. Shane to compare the national average in respect to particular categories of Internal Affairs complaints and also in relation to the statistical significance of the origin of the Internal Affairs complaints that being external v. internal and the percentage of or frequency of how often the complaints are sustained when made by citizens v. inter-departmentally. Stated differently, the Plaintiff is entitled to learn if the deficient Internal Affairs investigations Plaintiff has alleged are occurring within the City of Atlantic City Internal Affairs Division relate not just only to the individual Defendants but whether these investigations are reflective of a widespread deficiency within the Department giving rise to a custom pattern or practice necessary for municipal liability see Torres v. Kuzniasz 936 F. Supp. 1201, 1211 (D.N.J. 1996). Dr. Shane Plaintiff's proposed liability expert has indicated in previous reports that the "population's statistics includes all cases (100%) of a defined group that are being studied so that data driven conclusions can be drawn. Thus, all Atlantic City Police Department Internal Affairs cases are the "population". Dr. Shane has also indicated in his expert report within the case of Costantino v. City of Atlantic City "the population is preferred over a sample so that all cases of interest are represented and there is no error resulting from sampling. When the population of cases is known and available, as it is in this case, it is better to collect all of the cases instead of relying on a sample. This will ensure that no cases are skipped during sampling and there is no sampling error

introduced. See page 4. Dr. Shane also explains in his report in Costantino that “statistics are sensitive to low numbers. As such, statistical tests require a large amount of data to ensure the test is stable and does not produce inaccurate results. Internal Affairs investigations are in general a low-frequency event. Since these events do not occur as frequently as other less serious events, a large sample is necessary to capture as many serious cases as possible in the sample to ensure patterns can be identified. See page 4 and 5 of the Shane report in Costantino v. the City of Atlantic City attached hereto as ***Exhibit C***.

With the exception of Groark, Dr. Shane has been utilized as an expert in the Stadler case, the Castellani case, the Costantino and the Adams case, and all such cases have been subjected to scrutiny under summary judgment and summary judgment has been denied in each case relating to Plaintiff’s Monell theories which are substantially similar and/or identical to the Monell theories pursued in the case before this court.

One focus of Plaintiff Zampetis’ case similar to Groark, Castellani, Costantino, Adams, Stadler and Harrison in which summary judgment have all been denied on Plaintiff’s Monell claims, is obviously the inadequacy of Atlantic City’s police department’s Internal Affairs process. In this respect, Plaintiff Zampetis as the other Plaintiffs is also taking issue with the legitimacy of the Atlantic City Internal Affairs process and the custom and practice of exonerating and failing to adequately monitor their police officers through defective Early Warning System.

As a Judge Schneider aptly recognized, in Costantino v. City of Atlantic City 152 F. Supp. 3d. 311 (2015), “although it should be obvious, in order to prove her Monell allegations it is essential to Plaintiff be permitted to review Atlantic City’s IA files. Citing Scouler v. Craig, 116 F.R.D. 494, 496 (D.N.J. 1987) (“there can be no question of the relevancy of the IA files to the allegations of the complaint particularly where the complaint alleges inadequate supervision and

training under §1983). Further, as the court noted in *Groark*, 989 F. Supp. 2d at 393, “the requested IA files are fair game for discovery because they are directly relevant to Plaintiff’s claim that Atlantic City’s IA process is a sham and that Atlantic City failed to properly train its officers.” *Id.* at 394. This explains the remarkable fact that production of IA files is routinely ordered in §1983 cases. *Costantino* supra at 322. Moreover, as the court noted in *Reed v. Cumberland Co.* 34 F. Supp. 3d 396, 403 (D.N.J. 2013), “a Plaintiff must show why those prior incidents deserve discipline and how the misconduct in those situations was similar to the present one.” A Plaintiff cannot satisfy their burden of proving a *Monell* claim without looking at the content of Atlantic City’s IA files. Judge Schneider in reviewing Plaintiff expert Dr. Shane’s reports in *Costantino* noted: “Shane proposes to perform two (2) general types of analysis of Atlantic City’s IA files: a process or a qualitative analysis and a multiple regression statistical analysis. As to the former, Shane will examine the IA files to evaluate Atlantic City’s compliance with the applicable New Jersey’s Attorney General Guidelines for conducting IA investigations. The statistical analysis will test Plaintiff’s hypothesis and determine if certain conduct and actions were predictable. In general, Shane is “trying to capture... The overall picture of how Atlantic City’s Internal Affairs investigations played themselves out” this will include an analysis of whether Atlantic City’s IA process conforms to state and national norms. In this respect, Judge Schneider having reviewed Dr. Shane’s reports and his testimony in that case found them sufficient to justify the Plaintiff’s discovery request of all Internal Affairs file for all officers of the Atlantic City Police Department between 2004 and 2015. Indeed, Judge Schneider found that the Plaintiff’s request was not out of line with IA productions in other cases. Citing *Torres v. Kuzniasz* 936 F. Supp. 1201, 1214 (D. N. J. 1996) (ordering production of 1200 files); *Foley v. Boag* C. A. No. 05 – 3727SRC 2006 WL6830911, at*3 (D. N. J. May 31, 2006) (requiring production of all Internal Affairs records

and complaints against all police officers in the Defendant municipality for 10 years).

In point of fact, Judge Schneider ordered the production of 721 randomly selective IA files. Although it hardly needs to be argued, and quite frankly at this point in time in 2018, (8) years after Groark requested the Internal Affairs files of all the police officers for the Atlantic City Police Department and five (5) years following the filing of Castellani v. City of Atlantic City, this court has a wealth of judicial precedent and opinion involving the City of Atlantic City Police Department, its Internal Affairs process and claims against its officers relating to the use of excessive force to be able to take judicial notice of the fact that the City's Internal Affairs processes is a sham, the City failed to properly train it's officers and that the Internal Affairs process was at the very least deficient resulting in an inordinate amount of the citizen's complaint not resulting in discipline. In fact, judicial notice of the City's tolerance of a long-standing custom and practice and policy of condoning its officers use of excessive force could be judicially noticed by this court given the factual finding made by the jury in Stadler v. City of Atlantic City on this issue in this particular case before this court. This is so as a result of both the Stadler and Zampetis incidents occurring in February 2013. Thus, while the issue of whether such a long-standing custom, practice and policy of condoning the use of excessive force to effect arrest by Atlantic City police officers was the cause of Plaintiff Zampetis' injury may still be reserved for jury, the city of Atlantic City will be in this case collaterally estopped from relitigating the issue of whether the custom and practice and or policy existed at the time of the Plaintiff's brutal assault.

In this respect, as recognized by Judge Schneider in Costantino, this court is not alone in finding that a preliminary showing has already been made that Atlantic City's IA process is deficient. Summary judgment motions have been denied in Cordial v. Atlantic City (which decision also called into question Atlantic City's IA process and the court wrote that the Plaintiff

presented evidence from which a reasonable jury could infer that Atlantic City's IA investigation process is designed to insulate the accused officers from penalty). Id at*6. The court also held in Cordial that from the evidence a reasonable jury could find that the IA investigations were insufficient were inadequate and that the Atlantic City exhibited deliberate indifference to the risk that its officers would use excessive force in a manner similar to that alleged there.

Finally, as was the conceded by defense counsel at the previous Rule 37 conference before this court, the City of Atlantic City at this juncture cannot argue prejudice in the production of such files as the same have already been committed to a portable hard drive and/or burned on the numerous CDs that have been produced in the at least 5 to 7 cases in both the state and federal courts in this state.

Accordingly, as the large sample of the Internal Affairs files for the entire Police Department requested by the Plaintiff is necessary for Plaintiff's expert John Shane to conduct an appropriate statistical and qualitative analysis of such files for purposes of rendering his opinion, Plaintiff respectfully requests that the court compel the Defendant to produce the same.

Parenthetically, prior to the filing of this motion, counsel for the Plaintiff, contacted counsel for the Defendant City of Atlantic City and the attempted to resolve this matter through an amendment to interrogatory answers enclosing the trial testimony of Plaintiff's expert Dr. John Shane at the Stadler v. City of Atlantic City trial portions of which are attached to this application as exhibits. Counsel for the City of Atlantic City has objected to the same forcing Plaintiff to proceed to file this motion for production of the files previously requested and which Dr. Shane has reviewed in total and from which he has made a random sample selection and conducted a qualitative and statistical analysis and has rendered opinions concerning identical Monell claims pled in this Plaintiff's complaint. Counsel for Defendant City of Atlantic City argues in this respect

that the Plaintiff's expert Dr. Shane cannot rely upon his previous trial testimony and the opinions he provided in Stadler v. City of Atlantic City based upon a an identical analysis he proposes to perform in the case currently before this court, a case that occurred within weeks of the Stadler incident if not days given the fact that a confidentiality order existed in relation to the Internal Affairs files produced similar to a confidentiality order that exist in the current case before this court. In this respect, Dr. Shane has essentially already invented the wheel and does not need to reinvent it with respect to his statistical analysis and quantitative analysis performed in the opinions provided in Stadler in his expert reports in his testimony in Stadler portions which are attached hereto.

For all the aforementioned reasons it is respectfully requested that the court compel the Defendant City of Atlantic City to produce 10 years of Internal Affairs files 2005 to 2015 for the entire Police Department and Internal Affairs files relating to complaints for use of excessive force, assault, unlawful arrest and false arrest for the same time frame. Plaintiff also reserves the right to make a fee application for the filing of this motion pursuant to E.R. Civ. P. 37

Respectfully submitted,

DAVID R. CASTELLANI, ESQUIRE

Dated:

CASTELLANI LAW FIRM, LLC

David R. Castellani, Esquire - ID #: 023691991
 450 Tilton Road, Suite 245
 Northfield, New Jersey 08225
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 Attorneys for Plaintiff(s)

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CITY OF ATLANTIC CITY, POLICE	:	
OFFICER IVAN LOPEZ, POLICE	:	
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POLICE OFFICER MIKE AUBLE, and	:	ORDER
JOHN DOE ATLANTIC CITY POLICE	:	
OFFICERS 1-5, INDIVIDUALLY AND	:	
IN THEIR OFFICIAL CAPACITY,	:	
JOHN DOES 1-5	:	
	:	
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THIS MATTER having been opened to the Court by David R. Castellani, Esquire of Castellani Law Firm, LLC, attorney for Plaintiffs, and Tracy Riley, Esquire and Barbara Johnson Stokes, Esquire having appeared on behalf of the Defendants, and the Court having considered the matter and good cause appearing;

IT IS on this _____ day of _____, 2018, ***ORDERED*** as follows:

1.) Defendants must provide the Plaintiff with any and all IA files of all officers I the ACPD from 2005 to 2015 with ____ days of the date of this order.

- () Answering Papers
- () Reply papers

 Magistrate Judge Ann Marie Donio

CASTELLANI LAW FIRM, LLC

David R. Castellani, Esquire - ID #: 023691991

450 Tilton Road, Suite 245

Northfield, New Jersey 08225

(609) 641-2288

Attorneys for Plaintiff(s)

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OFFICER IVAN LOPEZ, POLICE	:
OFFICER ANTHONY ALOSI, JR.	:
POLICE OFFICER MIKE AUBLE, and	: CERTIFICATION OF SERVICE
JOHN DOE ATLANTIC CITY POLICE	:
OFFICERS 1-5, INDIVIDUALLY AND	:
IN THEIR OFFICIAL CAPACITY,	:
JOHN DOES 1-5	:
	:
	:

I, David R. Castellani, Esquire, hereby certify that a copy of the within Motion Compelling Documents and Brief in Support of Motion has been electronically filed and has been electronically served upon:

Tracy L. Riley, Esquire
Rachel Conte, Esquire
LAW OFFICES OF RILEY & RILEY
100 High Street, Suite 302
Mount Holly, NJ 08060

Todd Gelfand, Esquire
BARKER, GELFAND & JAMES
Linwood Greene – Suite 12
210 New Road
Linwood, New Jersey 08221

I hereby certify under penalty of perjury under the laws of the United States of America and the State of New Jersey that the above Certification of Service is true and correct. I recognize that if any of the foregoing is willfully false, I am subject to punishment.

s/ David R. Castellani

Date: April 6, 2016

DAVID R. CASTELLAN

EXHIBIT “A”

CASTELLANI LAW FIRM, LLC

450 Tilton Road, Suite 245
Northfield, New Jersey 08225

DAVID R. CASTELLANI
*Certified by the Supreme Court
of New Jersey as a Civil Trial Attorney*

Phone: (609) 641-2288
Fax: (609) 641-2299
david@castellanilaw.com
Tax I.D. No.: 20-3743893

August 30, 2017

A. Michael Barker, Esquire
BARKER, GELFAND & JAMES
210 New Road
Linwood, New Jersey 08221

Re: Zampetis v. City of Atlantic City, et al
Civil Action No.: 1:15-cv-01231

Dear Mr. Barker:

Enclosed please find Plaintiff's Supplemental Notice to Produce Directed to Defendant City of Atlantic City. Kindly respond within the time prescribed by the Court.

If you have any questions, or need for additional information, please do not hesitate to contact me.

Very truly yours,
CASTELLANI LAW FIRM, LLC

/s/ David R. Castellani

DAVID R. CASTELLANI

/kw

cc: Tracy L. Riley, Esquire
Nicholas J. Zampetis

CASTELLANI LAW FIRM, LLC
David R. Castellani, Esquire - ID #: 023691991
450 Tilton Road, Suite 245
Northfield, New Jersey 08225
(609) 641-2288
Attorneys for Plaintiff(s)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE**

NICHOLAS J. ZAMPETIS	:
	:
	:
	: CIVIL No.: 1:15-cv-01231-NLH-AMD
v.	:
	:
CITY OF ATLANTIC CITY, POLICE	:
OFFICER IVAN LOPEZ, POLICE	:
OFFICER ANTHONY ALOSI, JR.	:
POLICE OFFICER MIKE AUBLE, and	:
JOHN DOE ATLANTIC CITY POLICE	:
OFFICERS 1-5, INDIVIDUALLY AND	:
IN THEIR OFFICIAL CAPACITY,	:
JOHN DOES 1-5	:
	:
	:

**PLAINTIFF'S SUPPLEMENTAL NOTICE TO PRODUCE DIRECTED TO
DEFENDANT, CITY OF ATLANTIC CITY**

TO: A. Michael Barker, Esquire
BARKER, GELFAND & JAMES
210 New Road
Linwood, New Jersey 08221

In accordance with R. 4:10-2 et seq. and R. 4:18-1 specifically, Plaintiff demands that the Defendants provide copies of all discoverable materials and information within thirty (30) days after the service of this request.

If the Defendants believe something is not discoverable, please identify the item or information and state why it is not discoverable. If the item cannot be copied, please state what it is so a mutually convenient date and time can be agreed upon for inspection or reproduction of the item.

The following information and materials are requested:

- 1.) Copies of all discovery including deposition transcripts and interrogatory answers in the case of Harrison v City of Atlantic City, et al.; Adams v. City of Atlantic City and Castellani v. City of Atlantic City.
- 2.) Copy of the New Jersey Attorney General's OLEPS report relating to the incidences of a use of force within the Atlantic City Police Department.
- 3.) Copy of the complete Internal Affairs file relating to the arrest of Plaintiff by Defendants.
- 4.) Copy of the complete Municipal Court transcript relating to the trial in State v. Zampetis which was tried in the Atlantic City Municipal Court and involved the individual Defendant Officers.
- 5.) Copies of any photographs taken of the Plaintiff by any of the Defendants.
- 6.) Copies of any and all emails between any of the Defendants and or any members of the Atlantic City Police Department relating to their arrest and charging of the Plaintiff.
- 7.) Copies of any and all TAC audio transmissions relating to Plaintiff and the arrest made of Plaintiff which is the subject matter of Plaintiff's complaint.
- 8.) Copies of any and all Dash Cam video surveillance of the arrest of Plaintiff or the immediate aftermath of the arrest of Plaintiff including the transportation of Plaintiff to the police station and hospital
- 9.) Copy of any and all video footage of the Plaintiff after his arrest by the defendants in the Atlantic City Police Station.
- 10.) Copies of any and all policies and procedures in place at the Atlantic City Police Department relating to Use of Force and Baton/Expandable Baton.
- 11.) Copies of any and all documents including emails relating to surveillance video coverage of the incident involving Plaintiff and the Defendants from Tropicana Hotel & Casino.

12.) Copies of any and all documents relating to triggering or activation of the Early Warning System by any of the Defendant Police Officers in their employment history with the Atlantic City Police Department.

13.) Copies of all documents relating to an Early Warning System Policies and Procedures in place within the Atlantic City Police Department in 2012 and 2013.

14.) Copies of any and all documents from the Atlantic City Police Department or Atlantic County Prosecutor calculating the incidences of use of force by each police officer in the police force for the years 2012, 2013, 2014, 2015, 2016, 2017.

15.) All MAR and SPAR reports generated with the ACPD in the years 2013, 2014, 2015, 2016 and 2017.

16.) Internal Affairs' Complaints filed against all ACPD officers for Excessive Use of Force, Assault, False Arrest from 2005 to present.

17.) All Internal Affairs' Complaints filed with the ACPD between 2005 and present.

18.) Copies of any documents relating to text messages or any other form of electronic communication between the named Defendant Officers.

19.) Copies of any and all body worn camera video footage of the arrest of the Plaintiff or any aftermath of the arrest including police station footage.

CASTELLANI LAW FIRM, LLC
David R. Castellani, Esquire

Date: 8/30/17

CASTELLANI LAW FIRM, LLC

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david@castellanilaw.com
Tax I.D. No.: 20-3743893

January 29, 2018

Todd Gelfand, Esquire
BARKER, GELFAND & JAMES
210 New Road
Linwood, New Jersey 08221

Re: Zampetis v. City of Atlantic City, et al
Civil Action No.: 1:15-cv-01231

Dear Mr. Gelfand:

I previously sent you an email on January 15, 2018, requesting more specific answers to a Notice to Produce documents propounded upon the City of Atlantic City in relation to my letter of November 20, 2017. To date I have not received the same.

In addition to the eight (8) requests for more specific documents set forth in my November 20, 2017 letter to you, I also requested that the City of Atlantic City produce all Internal Affairs files for all City of Atlantic City police officers from 2005 to the present as relevant to the Monell claims set forth in the plaintiff's complaint.

As you are aware, the City has been ordered to produce these files in numerous similar cases including Constantino v. City of Atlantic City. In Constantino, Judge Schneider held that "although it should be obvious, in order to prove her Monell allegations, it is essential that plaintiff be permitted to review Atlantic City's IA files. There can be no question of the relevancy of the IA files to the allegations of the complaint particularly where the complaint alleges inadequate supervision and training under §1983. Indeed, the IA files are vital to plaintiff's Monell allegations. As the court noted in Groark I, "the requested IA files are fair game for discovery because they are directly relevant to plaintiff's claims that Atlantic City's IA process is a sham and Atlantic City failed to properly train its officers." This explains the unremarkable fact that production of IA files is routinely ordered in §1983 cases." Constantino supra at 321 – 322.

Given the holding in Constantino and other similar cases filed against the City of Atlantic City, I am making one last attempt to resolve this discovery issue without resort to motion practice. Please contact me to discuss the same.

Very truly yours,
CASTELLANI LAW FIRM, LLC

DAVID R. CASTELLANI

cc: Tracy L. Riley, Esquire
Nicholas J. Zampetis

CASTELLANI LAW FIRM, LLC

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Tax I.D. No.: 20-3743893

February 5, 2018

The Honorable Ann Marie Donio
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
Mitchell H. Cohen U.S. Courthouse
1 John F. Gerry Plaza, 4th & Cooper Streets
Camden, New Jersey 08101
[Via Fax (856-757-5296)]

Re: Zampetis v. City of Atlantic City, et al
NJ District Court Case #: 1:15-cv-01231-NJH-AMD

Dear Judge Donio:

I am writing to you pursuant to Local Civil Rule 37.1 (a) (1) as a discovery dispute has arisen between the plaintiff and the defendants in relation to certain documents plaintiff has requested by way of a Notice to Produce and the defendant City of Atlantic City has refused to provide.

I have forwarded a letter and the email to Mr. Gelfand, counsel for the defendant City of Atlantic City requesting that his client provide plaintiff with copies of all internal affairs files from 2005 to the present for all Atlantic City police officers as relevant to many of the Monell claims the plaintiff has set forth in his complaint.

The plaintiff's complaint against the defendants alleges claims for excessive force and malicious prosecution and includes Monell claims for failure to supervise and train as well as claims concerning the internal affairs process within the Atlantic City Police Department

including the ineffectiveness and lack of an Early Warning System and allegations that the entire Internal Affairs process with respect to a citizen's complaint is a sham.

I had pointed out to Mr. Gelfand in the letter dated January 29, 2018 as well as in the more recent email that judges in the District have previously ordered production of these very same internal affairs files which plaintiff is seeking in this case in similar excessive force, malicious prosecution cases. I even cited Judge Schneider's opinion in Constantino v. The City of Atlantic City as well.

I've also personally conferred with Mr. Gelfand on January 16, 2018, at a deposition, concerning the production of these internal affairs files and he indicated to me that I should file a motion to compel the same.

I respectfully request that Your Honor schedule a conference to discuss this discovery dispute in accordance with the Federal Rules of Civil Procedure 37.1 (a) (1).

Further, by copy of this correspondence, I am placing counsel on notice, that in the event this discovery dispute cannot be resolved and that plaintiff must resort to motion practice, that I will be seeking attorney's fees for the necessity of filing such a motion pursuant to Rule 37.1. I look forward to discussing this issue with Your Honor in a greater detail.

Respectfully submitted,
CASTELLANI LAW FIRM, LLC


/s/ David R. Castellani

DAVID R. CASTELLANI
/k

Cc: Todd Gelfand, Esquire
Rachel Conte, Esquire
Nicholas Zampetis

EXHIBIT “B”

SHANE - DIRECT - BONJEAN

1 and to offer an opinion here today to the ladies and gentlemen
2 of the jury?

3 A. Yes, I did.

4 Q. And what data did you have on which you based your
5 analysis and prepare your reports?

6 A. Well, there were two separate analyses that I conducted,
7 so I relied on a couple different things.

8 The first thing I relied on was a random sample of 33
9 Internal Affairs cases, that was for a qualitative analysis
10 looking at the process by which Atlantic City Police
11 Department conducts its Internal Affairs program, and the
12 Internal Affairs files that were submitted as part of
13 discovery that came from the Atlantic City Police Department.

14 Q. Okay. And, again, we're focussing on Report Number 1,
15 right?

16 A. Yes.

17 Q. Okay. Did you also have the complete Internal Affairs
18 files of the defendant officers as well?

19 A. Yes, I did.

20 Q. Okay. So I'm going to -- I'm not going to ask about that
21 right this second, but we're ongoing to focus on the Report 1
22 which deals with the Internal Affairs function overall. Okay?

23 A. Yes.

24 Q. What -- and if you could refer to Page 18 of your report,
25 maybe you don't need to, but what standards or policies did

SHANE - DIRECT - BONJEAN

1 Affairs function of the Atlantic City Police Department?

2 A. Yes, I did.

3 Q. And I think you mentioned at least one part of it. Was
4 it a one-part, two-part plan?

5 A. Two parts.

6 Q. What was the first part?

7 A. The first part was to select a random sample of Internal
8 Affairs files. That was a qualitative analysis that I
9 conducted. I wanted to understand the quality of the

10 investigations that were being conducted.

11 Q. And what about the second part, what was the second part
12 of your examination or of your plan for examining the Internal
13 Affairs function?

14 A. That was a data analysis empirical review of the Internal
15 Affairs files that were presented to me.

16 Q. Okay. And would you say that sort of was statistical in
17 nature?

18 A. Yeah, sure, yes.

19 Q. Okay. So now let's talk about part one.

20 A. Okay.

21 Q. Tell the ladies and gentlemen of the jury what you did as
22 part of this qualitative or process evaluation for examining
23 the Internal Affairs function.

24 A. So the first thing I did is I identified the years in
25 question and we had the years laid out, and I got the data

SHANE - DIRECT - BONJEAN

1 from the attorney, and I conducted what is known as a
2 stratified random sample. That's not hard to understand.
3 Stratified means that the years were parsed out, and then from
4 each of those years, I selected a random sample of cases. And
01:05 5 I selected a random sample to ensure the -- that bias was
6 reduced as much as possible. And that's in fairness to the
7 Atlantic City Police Department; that's in fairness to the
8 plaintiff. Because I want to be able to limit any -- any
9 systematic -- what's called systematic bias. I don't want to
01:05 10 just pick this case and this case, and suddenly I have a
11 series of cases that are all good or all bad, and that's not
12 the way to conduct a process evaluation.

13 Q. Okay. And why 33 cases? How did you come up with that
14 number?

01:05 15 A. There's an empirical statistical process called
16 saturation. And what happens during saturation, that's the
17 point at which you develop no further information, so there is
18 no sense in looking at more cases. And social scientists have
19 determined that saturation occurs at relatively low levels.

01:06 20 In many cases, it's as low as six cases. You'd only have to
21 look at six cases to establish the patterns that emerge. I
22 stuck with some of the other science that says, generally,
23 between 10 and 12 cases is sufficient for saturation. But in
24 keeping with a larger representative sample, I felt it
01:06 25 important to the Atlantic City Police Department and to the

—SHANE - DIRECT - BONJEAN—

1 plaintiff to draw a larger sample, so I selected about three
2 times as many, and I chose three cases per year for 11 years.

3 Q. Okay.

4 A. Which is 33.

01:06 5 Q. Well, was it 2009 to 2013 you were looking at for that
6 process part?

7 A. Let me check. I believe the answer is yes but let me
8 just double-check.

9 Q. You can look at the front page of your --

01:06 10 A. For the process evaluation --

11 Q. Oh, no --

12 A. No. It was 2004 to 2014.

13 Q. My apologies.

14 A. That's the 11-year span.

01:07 15 Q. Okay. And you didn't just say, oh, 33 sounds good to me,
16 right?

17 A. No.

18 Q. Was there actual statistical principles that guided your
19 choice of 33?

01:07 20 A. I relied on the literature and the science behind
21 saturation.

22 Q. Okay. And if we accept that saturation is a valid
23 principle --

24 A. It's been validated.

01:07 25 Q. It's been validated. Is this a -- is the saturation

SHANE - DIRECT - BONJEAN

1 principle something that is readily accepted in the community
2 of social science?

3 A. Especially in the qualitative research field, yes.

4 Q. Okay. And so, correct me if I'm wrong, under this
5 principle, whether you pick 33 or 133, the trend -- what you
6 see should be consistent. Is that right?

7 A. That's correct.

8 Q. Okay.

9 A. The reason you don't pick the 133 really is a matter of
10 efficiency.

11 Q. It's overkill?

12 A. It is, yes.

13 Q. And you talked about trying to avoid systematic bias. Do
14 you remember that?

15 A. Yes.

16 Q. If I had come to you and said, Dr. Shane, I have 33
17 cases, I want you to just look at these 33, these are
18 supergood ones, would that have produced what you would
19 consider a reliable reflection of the Atlantic City Police
20 Department?

21 A. Absolutely not, no.

22 Q. And did I do that?

23 A. No, you didn't do that.

24 Q. In fact, did I -- were you asked to look and examine
25 Steven Stadler's Internal Affairs file specifically?

—SHANE - DIRECT - BONJEAN—

1 A. You did not ask me to do that. I did it, but you did not
2 ask me to do it.

3 Q. And the 33 cases that you chose, did I have anything to
4 do with choosing those cases?

5 A. No.

6 Q. How did you actually do it, by the way, so the ladies and
7 gentlemen of the jury can understand?

8 A. Well, I used a free internet-based software, what's
9 called a randomizer. It just randomizes the numbers. And as
10 the random numbers are spit out, I take them in sequential
11 order.

12 So, let me give you an example. So, for 2004, the
13 first number that appeared was 41. The second number to
14 appear was 152. The third number to appear was 146. The
15 fourth number to appear was 34. So, knowing the -- the list
16 of cases that appeared in 2004 that Atlantic City proffered, I
17 went down the list and said, okay, I need Case Number 41.
18 Case Number 152, there was no -- there wasn't one. 146, I
19 didn't have one. 34, there was one, so I got that one.

20 Q. Okay. So, did you actually look at the substance of any
21 of those Internal Affairs files that you ultimately reviewed
22 prior to choosing to make them part of the 33?

23 A. What do you mean exactly?

24 Q. Yeah. Not a great question. It happens sometimes.

25 Let me -- so when you chose these 33 -- or when this

SHANE - DIRECT - BONJEAN

1 randomizer chose these 33 random cases, you didn't actually
2 flip through the cases themselves and say, oh, this is one
3 that, you know, I definitely want to look at or anything or
4 was it basically, these are the numbers, this is the one I
5 got?

6 A. No, the numbers drive the process.

7 Q. Okay. And this was irrespective of the type of
8 complaints as well, right?

9 A. It has nothing to do with that.

10 Q. Okay.

11 A. It doesn't deal with the complaint, the officer, the
12 supervisor, none of that. It's the number that drives the
13 case. So if Case Number 41 is the one that's selected,
14 whatever that case happens to be, that's the case that gets
15 examined.

16 Q. And was it your expert opinion that this was the most
17 reliable way to make conclusions about the Atlantic City
18 Police Department's Internal Affairs function overall?

19 A. Yes.

20 Q. Okay. Now, you've explained to us how you got these 33
21 cases. Once you received those 33 cases and pulled those
22 Internal Affairs investigations, how did you examine them or
23 for what did you examine them?

24 A. Well, I measured the -- what was done in the internal
25 investigation against the accepted practices.

SHANE - DIRECT - BONJEAN

1 Q. Okay. But what were you trying to determine?

2 A. I was trying to determine whether or not the process,
3 what is known as the Internal Affairs program, was conducted
4 in accordance with accepted standards.

01:12 5 Q. Okay. And what standard are we talking about?

6 A. The Attorney General's Guidelines, the accepted practices
7 for criminal investigations, the U.S. Department of Justice
8 Internal Affairs practices.

9 Q. Okay. Well, let's talk about the New Jersey guidelines.

01:12 10 Is there a guideline, an actual mandatory guideline, about
11 what has to happen with an Internal Affairs investigation?

12 A. The Attorney General's policy.

13 Q. Okay. No, is -- within the Attorney General's policy, is
14 there a specific guideline about the investigation itself,
01:12 15 what has to -- what has to occur in the investigation?

16 A. The Attorney General's policy doesn't lay out the
17 procedural aspects of how you're going to conduct it.

18 Q. You're getting ahead of me.

19 A. Okay.

01:12 20 Q. Does the Attorney General Guideline require to be
21 objective and thorough?

22 A. Yes, it does.

23 Q. Okay. That's all I wanted.

24 A. Okay.

01:12 25 Q. So, I believe --

—SHANE - DIRECT - BONJEAN—

1 2009 and 2013?

2 A. Yes, you did.

3 Q. For the statistical part, right?

4 A. Yes.

02:36 5 Q. And so we're looking at this period of time. How many
6 Internal Affairs investigations did you essentially count from
7 2009 to 2013?

8 A. 778.

02:37 9 Q. And how many complaints were contained within those
10 investigations?

11 A. 1,999.

12 Q. All right. What -- okay. So, there are complaints that
13 are called I think other rule violations?

14 A. Other rule violations, yes.

02:37 15 Q. Can you tell the ladies and gentlemen of the jury what an
16 other rule violation is?

02:38 17 A. Oftentimes, a police department has a catchall category,
18 some other rule violation that is not necessarily defined by
19 the organization, and what I was looking at here was putting,
20 putting a -- categorizing things to, in the interest of
21 amalgamating what I was looking at, I categorized other rule
22 violations as things like neglect of duty, standard of
23 conduct, improper procedure, those kind of things, as measured
24 against the other complaints that were there.

02:38 25 Q. Now, would you say that this other rule category are

SHANE - DIRECT - BONJEAN

1 things that do not have the potential to be criminal?

2 A. Probably not.

3 Q. Right.

4 A. Probably not. And mostly administrative.

02:38 5 Q. Okay. So, for instance, if an officer failed to, I don't
6 know, follow some procedure, filed the inventory or something,
7 might that be an other rule violation?

8 A. That's correct, yes.

02:38 9 Q. So, putting aside these other rule violations that are
10 almost invariably administrative, what was the most common in
11 this period of time, the most frequent Internal Affairs
12 complaint that was made against the Atlantic City Police
13 Department between 2009 and 2013?

14 A. Excessive force.

02:39 15 Q. And how many excessive force complaints did you calculate
16 between this time period?

17 A. 456, which amounted to 22.8 percent of the total
18 complaints.

02:39 19 Q. By the way, do you even know whether that's an accurate
20 number of excessive force complaints?

21 A. No, I don't.

22 Q. But that was based on data that was provided by the
23 Atlantic City Police Department, right?

24 A. Yes.

02:39 25 Q. All right. And I'm sorry, did you say what percentage of

SHANE - DIRECT - BONJEAN

1 complaints were sustained?

2 A. I have it written in here. Can I find the table?

3 Q. Yes.

4 A. Give me a moment.

02:43 5 Q. Page 50, I think. No, that's -- page 51.

6 A. One was sustained. That appears in table 13 on page 51.

7 One complaint was sustained, 455 were not sustained.

02:44 8 Q. Okay. Now, looking at the bottom of page 50, what is the
9 national rate of sustained complaints for an agency comparable
10 in size to the Atlantic City Police Department?

11 MS. RILEY: Objection, relevance.

12 THE COURT: Overruled.

13 THE WITNESS: A sustained rate around the nation is
14 about 12 percent. So, the Bureau of Justice Assistance, who
02:44 15 is a federal arm under the U.S. Department of Justice,
16 categorizes police departments, and one of the categories is
17 250 to 499 officers. So, during that period of time Atlantic
18 City had an average of about 361 officers. So, they fall into
19 that category, and the national rate was about 12 percent.

02:44 20 BY MS. BONJEAN:

21 Q. So, the national rate was about 12 percent, right? And
22 were you able to -- were you able to determine what the
23 percentage, the sustained rate for Atlantic City was?

24 A. .219 percent.

02:45 25 Q. .219 percent?

—SHANE - DIRECT - BONJEAN—

1 of courts, and agency policy, which is developed by the agency
2 in accordance with statutory and procedural law.

02:35 3 Q. Got it. All right. Now, I'd like to now draw your
4 attention, if I could, I think we've covered for the most part
5 some of the qualitative or themes that you saw that led you to
6 believe that the Internal Affairs function was not thorough
7 and objective, right?

8 A. Yes.

9 Q. On the qualitative side, right?

02:35 10 A. Yes.

11 Q. Were you able to look at some other data that helped to
12 either reinforce your conclusions?

13 A. Yes, the Atlantic City Police Department's data on
14 Internal Affairs.

02:36 15 Q. So, I'm going to draw your attention to page 47, and did
16 you find a pattern of complaints against Atlantic City Police
17 officers during a period of time of 2009 to 2013?

18 A. Yes.

02:36 19 Q. Okay. Now, is it fair, Dr. Shane, that you had access to
20 Internal Affairs investigations that was broader than 2009 to
21 2013?

22 A. Yes, I think so, yes, '04.

23 Q. Right.

24 A. Yeah, from '04.

02:36 25 Q. And did I ask you to look at this time period between

—SHANE - DIRECT - BONJEAN—

1 all types of complaints excessive force made up?

2 A. 22.8 percent.

3 Q. So, 22.8 percent of all the complaints possible that
4 could be made against the Atlantic City Police Department were
5 excessive force complaints, right?

6 MS. RILEY: Objection, leading.

7 MS. BONJEAN: Well, I'll withdraw it.

8 BY MS. BONJEAN:

9 Q. Go ahead, explain the 22.8 percent.

10 A. That's 22.8 percent of what I examined.

11 Q. Right.

12 A. Not of the entire universe of things that could
13 potentially come up against an officer.

14 Q. Correct. Okay. Fine. Fair enough.

15 All right. Did you include complaints that were also
16 characterized as assault under this excessive force?

17 A. No.

18 Q. Okay. So, is assault a separate category on top of
19 excessive force?

20 A. Yes. And that would include sexual assault as the way I
21 have it here, yes.

22 Q. Okay. So, we're going to focus on the excessive force,
23 if you might with me, hold on with me for a second. Okay?

24 Now, I think the jury already knows this, but just quickly, if
25 a complaint is investigated and it's found to have happened

SHANE - DIRECT - BONJEAN

1 and it was a violation, what do they characterize that as?

2 A. What's the disposition?

3 Q. What's the disposition.

4 A. Just to make sure I'm clear, if an allegation is made and
5 the charge --

6 Q. Strike that. What are the possible dispositions?

7 A. Sustained, not sustained, exonerated, unfounded.

8 Q. Okay. And which one of those --

9 A. And by the way, excuse me, Atlantic City uses

10 administratively closed, which is where I believe a

11 complainant withdraws their complaint, they say they don't

12 want to pursue it any longer, they close it administratively.

13 That's not an accepted disposition by the Attorney General,

14 although I will say that I have seen that in other places, but

15 the accepted four from the Attorney General are sustained, not

16 sustained, exonerated and unfounded.

17 Q. Okay. And of those categories you identified, if an

18 investigator says yes, I believe this officer committed an act

19 of excessive force, what would be the designation it was

20 given?

21 A. It would be sustained.

22 Q. Okay. So, just so we're talking with the same language,

23 if you could, of those 456 complaints for the department for

24 excessive force that you identified in this period of time

25 from 2009 to 2013, how many of those excessive force

—SHANE - DIRECT - BONJEAN—

1 A. Yes.

2 Q. Less than a quarter of a percent?

3 A. That's correct, .22 if you wanted to round it.

4 Q. Still less than a quarter of a percent?

5 A. Sure is.

6 Q. Did this data in any way influence your opinion about the
7 quality of the Internal Affairs investigations of this
8 department?

9 A. Well, the findings in Atlantic City are clearly not
10 consistent with the national rate, and if -- when you measure
11 the two, when you look at the practices or the quality of the
12 Internal Affairs investigations and because they've got so
13 many missing pieces, I said to myself there's a strong, very
14 high probability that the outcomes may have been different,
15 which would have raised that rate had they had all the proper
16 pieces put together.

17 Q. Thank you. Now, by the way, did you actually have
18 opportunity to look at some other data, for instance, how many
19 excessive force complaints resulted in medical treatment for
20 those who claimed that they had been the subject of excessive
21 force?

22 A. I did. I drafted --

23 Q. Page 49.

24 A. Okay. Thank you. I drafted a series of tables and
25 analysis for that sort of thing. You said --

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1 Q. I may be wrong about that.

2 A. -- 49? No.

3 Q. Hold on. Let me get to it. Page 58.

4 A. 58? Okay. Your question again, please?

02:47 5 Q. Yes. Of those -- we talked about 456 excessive force
6 complaints. What percentage of those did the complainants who
7 were alleging excessive force have to receive medical
8 treatment?

9 A. 71.9 percent, so essentially 72 percent.

02:47 10 Q. All right. The fact that so many -- well, I won't say so
11 many, but the fact that nearly 72 percent of complainants
12 actually needed medical treatment, what does that tell you
13 about the credibility of these excessive force complaints
14 overall?

02:48 15 MS. RILEY: Objection. Beyond the expert's scope,
16 Judge.

17 THE COURT: Let's go to sidebar on this. I need to
18 learn more about this.

19 (Sidebar)

02:49 20 THE COURT: Where is this going?

21 MS. BONJEAN: Just that the fact that people are
22 actually getting medical attention shows that these are not
23 frivolous complaints. They may not all have been sustained or
24 not sustained, some of them should never been filed, I don't
02:49 25 know, because there never have been any investigations done,

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1 but the point is the other side says all these complainants
2 are just lying, lying, lying, all of them, and the fact that
3 there's actually corroborating medical evidence undermines
4 that.

02:49 5 THE COURT: How does medical evidence corroborate use
6 of excessive force? There are no distinctions as to how these
7 people suffered the injuries. They claim they suffered
8 injuries, right?

02:50 9 MS. BONJEAN: Well, I think that if someone says that
10 they were punched in the eye and they didn't have a black eye,
11 that might say maybe he's not telling the truth.

12 THE COURT: But he didn't do that kind of analysis,
13 did he?

14 MS. BONJEAN: No, it was just data, statistical.
02:50 15 That's fine. I'll leave it.

16 THE COURT: Objection sustained.

17 MS. BONJEAN: I don't have to overreach.

18 MS. RILEY: Thank you.

19 (End of sidebar.)

02:51 20 BY MS. BONJEAN:

21 Q. Dr. Shane, did you do some analysis about comparing
22 complaints that initiated from inside the department versus
23 outside the department?

24 A. I did, yes.

02:51 25 Q. Can we call those complaints -- what would you call those

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1 complaints that initiated from inside the department?

2 A. Internal complaints.

3 Q. And what would you call those complaints that were
4 initiated from outside the department?

02:51 5 A. External complaints.

6 Q. And can you tell the ladies and gentlemen of the jury
7 what you mean by complaints that initiated from inside the
8 department?

9 A. So, within the organization, naturally there's a rule
02:51 10 book and there's policies, and if a police officer is observed
11 violating one of those policies or something comes to the
12 attention of the command staff or supervisor, they are
13 permitted to initiate an internal investigation coming from
14 within the organization, something that another police
02:51 15 supervisor has observed.

16 Q. And would it be fair to say that most complaints that
17 come from inside the department are either other police
18 officers or civilian personnel who work for the department?

19 A. It's either going to come from another police officer, a
02:52 20 civilian inside the organization, or a supervisor inside the
21 organization.

22 Q. So, either sworn or civilian working for the department,
23 correct?

24 A. Correct.

02:52 25 Q. Now, external complaints typically come from where?

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1 A. Citizens.

2 Q. Civilian citizens?

3 A. Yes.

4 Q. All right. Now, did you have an opportunity to look at

5 the complaints, all -- and I'm not just talking about

6 excessive force complaints right now. Okay? I'm talking

7 about the Internal Affairs complaints for this time period

8 we've discussed, I think 2009 to 2013. Did you have an

9 opportunity to figure out how many of those complaints were

10 coming from inside the department versus outside the

11 department?

12 A. I did some analysis on that, yes.

13 Q. All right. And do you have a table that I will direct

14 you to? 52? Thank you. I passed by it.

15 A. Are you referring to table 14?

16 Q. 51?

17 A. Page 51?

18 Q. 51, I guess. Oh, no. 51? Okay.

19 A. Table 14, page 51.

20 Q. Yes. I got it. Thank you.

21 Okay. Of the Internal Affairs complaints that you

22 reviewed, did most come from outside the department or inside

23 the department?

24 A. Most of the complaints overall, whether or not they were

25 sustained, came from outside the department.

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1 Q. Okay. And we're putting dispositions aside for a second.

2 What percentage of Internal Affairs complaints came from

3 external sources, people, really civilians or citizens?

4 A. 83.6 percent, so 84 percent.

02:54 5 Q. And how many of the Internal Affairs complaints were

6 initiated by individuals working within the department?

7 A. 16 percent.

8 Q. All right. Now, I want to ask you first about of those

9 Internal Affairs complaints that were initiated from an

02:54 10 external source, outside the department, how many were

11 sustained? And again, we're talking about not just excessive

12 force, but any type of, any type of complaint that could come

13 in.

14 A. Yes, 51.

02:55 15 Q. Outside?

16 A. That were sustained?

17 Q. Yes.

18 A. Excuse me. Yeah, okay, so external complaints that were

19 sustained, 51.

02:55 20 Q. That's a raw number. That's not a percentage, right?

21 A. That's the raw number. You said how many.

22 Q. Oh, my apologies. Okay. What percentage?

23 A. Oh, 2.6 percent.

24 Q. Okay. So, 2.6 percent of Internal Affairs complaints

02:55 25 overall, not just excessive force, that were initiated by

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1 civilians or external sources were sustained; is that right?

2 A. That's right.

3 Q. Now, looking at those Internal Affairs complaints that
4 were initiated from inside the department, either by other law
5 enforcement or personnel working, what was the sustained rate
6 for those Internal Affairs complaints?

7 A. 10 percent.

8 Q. 10 percent. Is there -- do you have an opinion about the
9 statistical difference between the sustained rate for those
10 coming from outside the department versus those coming from
11 inside the department?

12 A. Well, the sustained rate is almost four times as high
13 from within the organization than it is -- when a complaint is
14 generated from within the organization compared to outside the
15 organization.

16 Q. And what is the significance of that statistical
17 differential, if you could?

18 A. Well, a finding like this is for police management to
19 pause and to take a pause to figure out what is it about
20 external complaints that are not being sustained. Is it the
21 lack of evidence, is it a false allegation, is it a poor
22 investigation? Conversely, what is it about investigations
23 that are being generated internally that have such a high
24 sustained rate or such a higher sustained rate? Is something
25 happening within the organization? Is there a bias in favor

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1 of the officers or compared -- or excuse me, in favor of the
2 supervisors or the person from within the organization
3 compared to a bias against someone who is outside the
4 organization? You can't tell from the data alone, but that's
5 the management practice and the supervisory practice that
6 needs to play itself out.

7 Q. Well, did you also look at another datapoint that helps
8 maybe flesh this out a little further?

9 A. Yes.

10 Q. Looking at table 15, you've identified that one important
11 feature of a thorough and objective investigation is actually
12 formally interviewing an officer, right?

13 A. Yes.

14 Q. How often did that happen in external complaints, meaning
15 when a civilian made the complaint, what percentage? Just
16 give us a percentage.

17 A. Whether the officer was formally interviewed based on an
18 external complaint happened 113 times for 5.7 percent of the
19 cases.

20 Q. Okay. So, in 5.7 percent of the cases, the officer was
21 formally interviewed when you're looking at it from those
22 cases that were initiated externally, right?

23 A. That's correct.

24 Q. How often did they interview, and they, I mean the
25 Internal Affairs investigators, interview or formally

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1 interview a police officer when the complaint came from
2 supervisors or someone inside the department?

3 A. I counted 148 instances, 7.4 percent.

4 Q. 7. So, it still didn't happen very often?

5 A. Not very frequently, no.

6 Q. Okay. But was it a higher -- did it happen more
7 frequently than when the complaint was initiated from outside?

8 A. Yes.

9 Q. All right. And these datapoints that you looked at, did
10 they suggest any potential for bias in the investigations?

11 A. Well, those two things taken together speak to process,
12 which is exactly what we're trying to find out, right, whether
13 or not the process is implemented properly, the Internal
14 Affairs program, and the fact that there was more formal
15 interviews conducted when complaints were generated internally
16 compared to externally suggests that they're tipping, the
17 investigator is somehow tipping in favor of complaints
18 generated inside the agency compared to outside the agency.

19 Q. Okay. Now, Dr. Shane, did you see anything in these
20 Internal Affairs investigations that led you to believe that
21 these Internal Affairs investigators had underwent any type of
22 formalized and routine training to conduct Internal Affairs
23 investigations?

24 A. I didn't see any evidence in the documents that I was
25 given that the Internal Affairs investigators had training